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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/767,482 | 01/28/2004 | Dean E. Meyer | MDG-007CIP | 5074 |

7590
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02/08/2007

EXAMINER

LARSON, JUSTIN MATTHEW

ART UNIT

PAPER NUMBER

3782

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 02/08/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/767,482

Applicant(s)

MEYER, DEAN E.

Examiner

Justin M. Larson

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5,7,9,12-16,19,21 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7,15,21 and 24 is/are allowed.
- 6) ☒ Claim(s) 1,5,9,12-14,16 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action includes newly introduced grounds of rejection for subject matter that was previously indicated allowable, thereby making this action **Non-Final**.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Pinczykowski (US 4,892,238 A).

Pinczykowski discloses a member (10) for supporting an article (40), the member defining a pair of arms (16,18,22,24) made of a flexible core material (32) which allows the shape of said arms to be changed along the length thereof and which allows said arms to independently retain their shape. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Pinczykowski which is capable of being used in the intended manner, i.e., the article being carried by a user and the spaced-apart arms resting or engaging against a user's waist, hips, or back. There is no structure in Pinczykowski that would prohibit such functional intended use (see MPEP 2111).

4. Claims 1, 5, 9, 13, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson (US 5,890,640 A).

Regarding claim 1, Thompson discloses a member (26/28) for supporting a pack about the waist and/or hips of a wearer, the member defining a pair of arms adapted to engage the waist and/or hips of the wearer and being made of a resilient or flexible core material (col. 4 line 5) which allows the shaped of said arms to be changed along the length thereof so as to allow said arms to be manipulated into at least a first selected bent and curved position against the waist and/or hips of the wearer and further said flexible core material allowing said arms to independently retain said at least first selected bent position when said arms are released by the wearer. Regarding the flexible core material allowing for shape retention, Examiner is of the position that the arms can be bent around a user, as allowed by the flexible material, at which point they are retained in that bent position when the strap (52) is secured around the user, again allowed by the flexible core material.

Regarding claim 5, a strap (52) interconnects the arms of Thompson and is adapted to move the arms towards each other when the pack is mounted over the back of the wearer. Tightening the belt would draw the arms together against a user's hips and/or waist.

Regarding claim 9, the pack of Thompson includes a shell defining a hollow interior, a front face having a pair of openings defined therein, and a pair of sleeves (44,46) extending outwardly from the front face thereof in the region of said openings, and the pack further comprising a support member (26/28) as related to claim 1 above.

Regarding claims 13 and 14, the support member of Thompson is an elongate resilient and flexible rod that must have resilient and flexible material at its core.

Regarding claim 16, the backpack of Thompson includes a front face, a pair of sleeves (44,46), a hollow interior, straps (16,18), and a support member as related to claims 1 and 9 above.

Claim Rejections - 35 USC § 102 / 35 USC § 103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12 and 19 are rejected under 35 U.S.C. 102(b) as being unpatentable over Thompson or, in the alternative, under 35 U.S.C. 103(a) as being obvious over Thompson in view of Nagasawa (BE 1005935 A6).

Under 35 U.S.C. 102(b), Thompson discloses the claimed invention, including a strap (52) interconnecting and extending between the arms. The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Thompson which is capable of being used in the intended manner, i.e., the strap engaging against the back of a wearer to bring said arms together into engagement

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against the waist and/or hips of the wearer. There is no structure in Thompson that would prohibit such functional intended use (see MPEP 2111). The pack of Thompson could be worn on the front side of the user such that the hips strap (52) contacted the backside of the wearer instead of their front side.

Under 35 U.S.C. 103(a), Thompson disclose the claimed invention, however, it can be argued that there is no motivation for wearing the backpack on the front of a user so that the hip strap (52) would contact the backside of the wearer. Nagasawa, however, teaches that it is known in the art for backpacks to be worn on either a user's backside (Figure 9) or their front side (Figure 12). It would have been obvious to one having ordinary skill in the art at the time the invention was made that the pack of Thompson could be carried on a user's front side as well as their backside, as taught by Nagasawa, in order to carry the load in a different manner.

Allowable Subject Matter

8. Claims 7, 15, 21, and 24 are allowed.

Response to Arguments

9. Applicant's arguments filed 10/19/06 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML
1/22/07


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER